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APPENDIX

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

No. 91-8941

JAMES G. MESSER,
Plaintiff-Appellant,

v.

CITY OF DOUGLASVILLE, GEORGIA,
a political subdivision of the State of Georgia,
Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

Oct. 22, 1992

Before DUBINA, Circuit Judge, and HILL and CLARK, Senior Circuit Judges.

CLARK, Senior Circuit Judge:

This case concerns the constitutionality of various aspects of the sign ordinance of the City of Douglasville. For the reasons stated below, we affirm the district court in finding the ordinance constitutional.

I. FACTS AND PROCEDURAL BACKGROUND

The plaintiff, James Messer, owns an automobile paint and body shop within the historic district of Douglasville, Georgia. In 1988, he leased rights to construct a billboard on his property to Adams Outdoor Advertising of Atlanta, Inc. ("Adams") an outdoor advertiser, Jimbo Displays, Inc. ("Jimbo") and Holland Outdoor Displays, Inc. ("Holland") companies that construct and erect outdoor advertising signs, or billboards. Jimbo obtained a permit from the City of Douglasville for an off-premise billboard on a specific site. The permit was to expire on August 13, 1989. Jimbo and Holland then erected the billboard but 30 feet off the site approved by the city.

On April 17, 1989, the City of Douglasville enacted a sign ordinance prohibiting off-premise signs in the historic district of Douglasville. Subsequent to the enactment of the ordinance, the city became aware that the sign on Messer's property was not at the approved site. It informed Jimbo and Holland that the existing sign was not permitted and therefore could not continue in existence as a non-conforming sign. A new permit could not be issued because of the new ordinance.

Jimbo and Holland requested a hearing before the Board of Adjustments and Appeals, asking that the sign be permitted. The Board affirmed the decision of the building officer denying the permit on April 6, 1990. Two months later, on July 10, 1990, Adams contracted with Jimbo and Holland to purchase the sign located on Messer's property, and entered into a lease agreement with Messer contingent on the results of this action.

Two days later, on July 12, 1990, Messer, Holland, Jimbo and Adams filed this § 1983 suit against the City of Douglasville, alleging the prohibition of off-premise advertising in the historic district of the City of Douglasville and other aspects of the City's sign ordinance violates the First Amendment and the Equal Protection Clause of the

Fourteenth Amendment. Pursuant to a subsequent consent order, the district court dismissed Adams, Jimbo and Holland with prejudice, leaving Messer to prosecute this action alone.

Messer challenged five aspects of Douglasville's sign ordinance. The relevant portions of the Douglasville sign ordinance are set out in the margin *infra*. First, Messer argued that the section of the ordinance allowing only on-premise signs and disallowing off-premise signs in the historic district of Douglasville impermissibly favored commercial over noncommercial speech in that district. Second, he argued that because an ordinance covering the entire city of Douglasville allowed exemptions for certain types of signs from the permit requirements and not others, it was not content neutral in its regulation of non-commercial speech. Third, he asserted that the temporary permit provisions mandating cash bonds from persons seeking to put up temporary signs favored commercial over political speech. Fourth, he contended that the portable display provisions of the ordinance violated the First Amendment. Finally, he argued that the variance powers invested in the city's Board of Appeals and Adjustments violated due process.

In an order dated June 26, 1991, the district court granted summary judgment to the city on the first issue. It held that the ordinance did not impermissibly favor commercial over non-commercial speech by allowing on-premise signs but not off-premise signs. The court found that Messer did not have standing to challenge the variance powers of the Board of Appeals, as he suffered no real injury, and had not asked the Board for a hearing. The only hearing that took place had been requested by Mr. Holland on behalf of Jimbo and Holland, the billboard corporations.

In an order filed September 25, 1991, the district court granted summary judgment to the City on the remaining

issues. It found that the exemptions to the permit requirements did not violate the First Amendment because they were not *restrictions* on commercial speech. The temporary permit provisions were also constitutional as they were not substantially broader than necessary to achieve the government's aesthetic interest in prompt removal of the signs. The portable display provisions were also constitutional as they were rationally related to the government's interest in the aesthetics of the city.

II. DISCUSSION

A. *Off-premise signs*

The Douglasville sign code prohibits off-premise signs [1] throughout the historic district of the City of Douglasville,[2] and in various specific locations.[3] In addition to

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[1] The City of Douglasville, Ga. Code § 26 (1989) states:

Sec. 26-4. Definitions

Off-premise advertising sign: A sign which directs attention to a building, profession, product, service, activity, or entertainment not conducted, sold, or offered on the property upon which the sign is located.

On-premise sign: A sign which directs attention to a building, profession, product, service, activity, or entertainment conducted, sold, or offered on the property upon which the sign is located.

. . . .

Sign: Any name, identification, description, display, illustration, or device which is affixed to or represented directly or indirectly upon the exterior of a building, structure, or land in view of the general public which directs attention to a product, place, activity, person, business or institution.

[2] Sec. 26-28. Prohibited signs.

The following signs are prohibited within the Douglasville Historic District unless specifically permitted as a temporary sign:

. . . .

(7) Off-premise or separate use signs.

[3] Sec. 26-7. Prohibited signs.

. . . .

[Continued]

challenging the ordinance relating to off-premise signs in the Historic District, Messer argues that the regulations in Secs. 26-7, 26-8(b)(6) and (c)(3), (5), (6), (9) and

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[3] [Continued]

(9) No off-premise sign shall be located within three hundred (300) feet of any officially designated historical site or monument, except signs pertaining to that particular site.

Sec 26-8. Special regulation by type of sign.

(b) *Freestanding on-premise signs*

. . . .

(6) *Height Requirements:*

The height of all on-premise free-standing signs at their highest point above the level of the ground shall not exceed fifty (50) feet; provided; however, that a sign located on property adjacent to or within five hundred (500) feet of a federal interstate highway which advertises a product or service of specific interest to the motoring public, such as automobile service stations, restaurants and motels, may be seventy (70) feet at its highest point; however, if the ground is lower than the level of the adjoining street pavement, then a sign may be raised so as to be no more than twenty-five (25) feet above the level of the pavement. The level of the ground shall not be altered in such a way as to provide additional sign height. The height of all wall, canopy and roof signs at their highest point above ground level shall be as provided by the standards of the applicable zoning district.

(c) *Off-premise signs in general:*

. . . .

(3) *Height above interstate grade.*

All signs adjacent to the interstate highway right-of-way shall be a minimum of ten (10) feet above the adjacent interstate pavement measuring from the lower portion of the sign face. Signs shall not exceed thirty (30) feet in height. Two (2) signs in the same location (back to back) or in a "V" formation shall be the same height above the interstate surface.

. . . .

(5) . . . Only one sign on-premise or off-premise shall be allowed per lot frontage where a business, profession, product, service, activity, or entertainment is conducted, sold, or offered.

. . . .

[Continued]

(10) of the Douglasville Code unconstitutionally favor commercial over noncommercial speech.

1. The Historic District of Douglasville

There is a complete ban on off-premise signs in the historic district in the City of Douglasville. Appellant Messer argues that this ordinance favoring on-premise over off-premise signs also favors commercial speech over noncommercial speech, thus violating the First Amendment as interpreted by *Metromedia, Inc. v. San Diego*, 453 U.S. 490, 101 S.Ct. 2882, 69 L.Ed.2d 800 (1981).

The *Metromedia* plurality held that regulation favoring on-site commercial advertising over off-site commercial advertising was permissible, but regulation favoring on-site commercial over non-commercial speech was impermissible. *Metromedia*, 453 U.S. at 511-12, 101 S.Ct. at 2894-95. A landowner or commercial enterprise has much more significant interest in identifying or advertising its own business or products than in advertising the products of others. Thus, a governmental entity may restrict the landowner's interest in advertising the products of others in the interests of aesthetics and safety, while leaving the landowner's interest in advertising its own business intact. However, this does not justify disallowing noncom-

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[3] [Continued]

(6) *Spacing on the interstate.*

Sign locations on property adjacent to the interstate highway right of way shall be no less than one thousand (1000) feet apart, measured from the two (2) closest points.

. . . .

(9) *Marsh area prohibitions.*

No sign shall be placed in or obstruct the view of marshlands.

(10) Signs shall not be placed within two hundred (200) feet of the property line of a bona fide residence, church, school, park or public building, as measured by the two (2) closest points.

mercial billboards where commercial billboard are allowed. The court stated:

> The fact that the city may value commercial messages relating to onsite goods and services more than it values commercial communications relating to offsite goods and services does not justify prohibiting an occupant from displaying its own ideas or those of others.
>
> . . . .
>
> Insofar as the city tolerates billboards at all, it cannot choose to limit their contents to commercial messages; the city may not conclude that the communication of commercial information concerning goods and services connected with a particular site is of greater value than the communication of noncommercial messages.

Metromedia, 453 U.S. at 513, 101 S.Ct. at 2895.

The Court, however, did not distinguish between onsite and offsite *noncommercial* messages. Thus, it did not directly address the question now before us: whether a regulation allowing onsite noncommercial signs while denying offsite noncommercial signs would be constitutionally permissible.

We must first decide whether such an ordinance seeks to regulate speech according to its content. It is well settled that "the First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others." *Members of City Council v. Taxpayers for Vincent*, 466 U.S. 789, 804, 104 S.Ct. 2118, 2128, 80 L.Ed.2d 772 (1984). In *Vincent*, the Court ruled the sign ordinance at issue "viewpoint neutral" as

> [T]here is not even a hint of bias or censorship in the City's enactment of enforcement of this ordinance. There is no claim that the ordinance was de-

> signed to suppress certain ideas that the City finds distasteful or that it has been applied to appellees because of the views that they express. The test of the ordinance is neutral—indeed it is silent—concerning any speaker's point of view.

Vincent, 466 U.S. at 804, 104 S.Ct. at 2128 (citations omitted).

We find that the City of Douglasville's sign ordinance prohibiting off-premise billboards is similarly viewpoint neutral. It regulates signs not based on the viewpoint of the speaker, but based on the location of the signs. There is no claim of bias, censorship or preference regarding a speaker's point of view. The ordinance does not favor commercial over non-commercial speech; neither does it favor non-commercial over commercial speech. Contrary to Messer's argument, there is simply no basis for equating on-premise signs with commercial speech, and off-premise signs with noncommercial speech. A noncommercial enterprise would be able to put up a sign bearing a noncommercial message as long as it relates to any activity on the premises. Similarly, a commercial enterprise would be able to put up a sign bearing a noncommercial mesage which related to any activity on the premises. For example, an auto mecahnic's garage would be able to put up a noncommercial message relating to the recycling of used motor oil. *Accord Wheeler v. Commissioner of Highways*, 822 F.2d 586, 591 (6th Cir.1987), *cert. denied*, 484 U.S. 1007, 108 S.Ct. 702, 98 L.Ed.2d 653 (1988) (a distinction between onsite and offsite noncommercial signs is constitutionally permissible); *National Advertising Co. v. Chicago*, 788 F.Supp. 994, 997-98 (N.D.Ill.1991) ("the distinction between on-site and off-site advertising is not aimed toward the suppression of an idea or viewpoint"); *see Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 295, 104 S.Ct. 3065, 3069-70, 82 L.Ed.2d 221 (1984) (general ban on camping in park upheld); *Heffron*

v. International Soc. for Krishna Consciousness, Inc., 452 U.S. 640, 648-49, 101 S.Ct. 2559, 2564-65, 69 L.Ed.2d 298 (1981) (regulation requiring all dissemination of ideas to be made from fixed locations within state fair upheld); *cf. National Advertising Co. v. Orange*, 861 F.2d 246, 248 (9th Cir.1988) (court dismissed but did not decide the issue because it struck ordinance based on system of exemptions); *contra Burkhart Advertising, Inc. v. Auburn*, 786 F.Supp. 721, 732 (N.D.Ind.1991) (ban on off-premise signs is not content neutral because "[i]t prohibits all kinds of speech because of what it *says*"); *Metromedia, Inc. v. Mayor & City Council of Baltimore*, 538 F.Supp. 1183, 1187 (D.Md. 1982) (identification signs only ordinance was not content neutral because "an owner or occupier within the area may affix a sign identifying his premises but may not affix a sign displaying his ideas or those of others").

The Sixth Circuit, upholding a similar ordinance prohibiting off-premise advertising signs, stated:

> [T]he on-premise/off-premises distinction does not constitute an impermissible regulation of content just because the determination of whether a sign is permitted at a given location is a function of the sign's message. Kentucky, by allowing persons who own or lease property, to have a sign, subject to size and space restrictions, advertising an activity conducted on the property is not favoring one message over another. The state has simply recognized that the right to advertise an activity conducted on-site is inherent in the ownership or lease of the property.

Wheeler, 822 F.2d at 591.

Having decided that the ordinance is viewpoint neutral, we must next decide if the government's interests justify this regulation of noncommercial speech. Time, place and manner restrictions are permissible if "they are justified without reference to the content of the regulated speech,

. . . serve a significant governmental interest, and . . . leave open ample alternative channels for communication of the information." *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748, 771, 96 S.Ct. 1817, 1830, 48 L.Ed.2d 346 (1976). In *Vincent, supra*, the Court stated:

> [A] government regulation is sufficiently jusified if it is within the constitutional power of the Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of the interest.

Vincent, 466 U.S. at 805, 104 S.Ct. at 2128, *quoting United States v. O'Brien*, 391 U.S. 367, 377, 88 S.Ct. 1673, 1679, 20 L.Ed.2d 672 (1968). Thus, to uphold a viewpoint neutral regulation of speech, a government must show that 1) it has the constitutional power to make the regulation, 2) an important or substantial government interest unrelated to the suppression of free speech is at stake, and 3) the ordinance is narrowly drawn to achieve its desired ends, leaving other channels for the communication of information.

It is well settled that the state may legitimately exercise its police powers to advance its aesthetic interests. *Vincent*, 466 U.S. at 805, 104 S.Ct. at 2129. It is also well settled that both traffic safety and aesthetics are substantial governmental goals. *Vincent*, 466 U.S. at 807, 104 S.Ct. at 2130. The Court in *Vincent* also affirmed *Metromedia* as holding that a city's aesthetic interests are sufficiently substantial to provide an acceptable justification for a content neutral prohibition against the use of billboards. *Vincent*, 466 U.S. at 806-07, 104 S.Ct. at 2130.

A government has a more significant interest in the aesthetics of designated historical areas than in other

areas. In *Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 107-08, 98 S.Ct. 2646, 2651, 57 L.Ed.2d 631 (1978), the Supreme Court recognized that

> These nationwide legislative efforts [to designate historic sites and landmarks] have been precipitated by two concerns. The first is recognition that, in recent years, large numbers of historic structures, landmarks, and areas have been destroyed without adequate consideration of either the values represented therein or the possibility of preserving the destroyed properties for use in economically productive ways. The second is a widely shared belief that structures with special historic, cultural, or architectural significance enhance the quality of life for all.

Similarly, Justice Brennan, concurring in *Metromedia*, wrote:

> I have little doubt that some jurisdictions will easily carry the burden of proving the substantiality of their interest in aesthetics. For example, the parties acknowledge that a historical community such as Williamsburg, Va. should be able to prove that its interest in aesthetics and historical authenticity are sufficiently important that the First Amendment value attached to billboards must yield. And I would be surprised if the Federal Government had much trouble making the argument that billboards could be entirely banned in Yellowstone National Park, where their very existence would so obviously be inconsistent with the surrounding landscape.

Metromedia, 453 U.S. at 533-34, 101 S.Ct. at 2906 (Brennan, J., concurring).

Next, we must also decide whether this ordinance is sufficiently narrowly drawn, and leaves open ample channels of communication of noncommercial messages. Again, we find that it is and does. The ordinance does not apply to the entire city of Douglasville. Off-premise noncom-

mercial signs are allowed in the parts of the city not designated as a historic district. *See Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 53-54, 106 SCt. 925, 932, 89 L.Ed.2d 29 (1986) (it was not an unreasonable restriction to have five percent of the entire city's area zoned available for adult movie theatres as the First Amendment does not guarantee freedom from marketplace competition over commercial sites).

Because a blanket ban on off-premise signs is limited to the historic district of Douglasville, we do not need to decide if a government's interests in traffic safety and aesthetics are an acceptable justification for a city-wide ban of off-premise noncommercial signs. We simply decide that the government's interests in the aesthetics of a designated historic district are sufficiently significant to override the First Amendment rights of a property owner to off-premise noncommercial signs.

2. Other restrictions on off-premise signs

Messer also attacks various other limitations on off-premise signs as also favoring commercial over noncommercial speech. *See* note 3, *supra*. Because we find that limitations on off-premise signs are viewpoint neutral, we find the ordinances to be valid time, place and manner regulations. There is absolutely no evidence in the record to show that these ordinances unduly impact noncommercial speech, as Messer argues, or were designed to suppress such noncommercial speech.

B. *The exemptions from the permit requirements*

Section 26-17 of the Douglasville sign code exempts five types of signs from permitting requirements and/or permit fees: 1) one wall sign per building side announcing the business and attached to the side of the building, 2) one real estate "for sale" sign per property frontage, 3) one bulletin board located on religious, public, charitable or educational premises, 4) one construction identifi-

cation sign, and 5) directional traffic signs containing no advertisements.[4] Like the remainder of the ordinances discussed *infra*, this ordinance applies city wide.

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[4] ARTICLE II. PERMITS

Section 26-16. Permit required.

No sign shall be erected reconstructed, expanded or replaced without securing a permit from the building official. All nonconforming signs shall be registered with the building official within ninety (90) days of the effective date of this chapter. No permit shall be required for a change of copy on a sign, the customary use of which involves frequent and periodic changes of copy.

Sec. 26-17. Permit fee not required.

No permit fee shall be charged for the following types of signs, however, prints or drawings showing location of such signs shall be submitted to the building official. No additional wall signs, real estate sales signs, bulletin boards, or project signs except as authorized under this section shall be permitted.

(1) A permit must be obtained, but no permit fee shall be charged for one wall sign per building side announcing the business and attached flat to the side of the building. The wall sign(s) shall cover no more than a miximum of twenty-five percent (25%) of the wall surface.

(2) No permit or permit fee shall be required for one real estate "for sale" sign per property frontage that does not exceed twelve (12) square feet in sign area in residential areas or one hundred (100) square feet in sign area in nonresidential districts. No separate "for lease" sign may be displayed except within the sign face of an existing permitted sign or within the window of the building "for lease."

(3) No permit or permit fee shall be required for one bulletin board that does not exceed thirty-two (32) square feet in sign area for public, charitable, educational or religious institutions when the sign is located on the premises of said institution.

(4) No permit or permit fee shall be required for one (1) sign per project location denoting the architect, engineer, contractor or financial institution when placed upon work under construction, alteration or removal that does not exceed fifteen (15) square feet in sign area in residential areas or one hundred (100) square feet in sign area in nonresidential districts.

[Continued]

Messer argues that the ordinance distinguishes between different noncommercial messages, and exempts certain noncommercial messages from permitting requirements based on their content, resulting in an unconstitutional content-based restriction on the noncommercial messages not so exempted. He argues that as the San Diego ordinance in *Metromedia* was struck for its system of exemptions favoring certain types of noncommercial speech over others, so should the Douglasville ordinance be struck.

The *Metromedia* plurality struck the San Diego ordinance because it had a system of exceptions to the general ban on non-commercial billboards which violated the First Amendment.[5] The court held that "[w]ith respect to noncommercial speech, the city may not choose the appropriate subjects for public discourse. . . . Because some noncommercial messages may be conveyed on billboards throughout the commercial and industrial zones. San Diego must similarly allow billboards conveying other noncommercial messages throughout those zones." *Metromedia*, 453 U.S. at 515, 101 S.Ct. at 2896.

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[4] [Continued]

All such signs shall be removed within seven (7) days after substantial completion of the project.

(5) No permit shall be required for signs directing traffic movement onto a premise or within a premise if the direct or sign is under thirty (30) inches high and contains no advertisement.

[5] The noncommercial signs excepted from the general ban were:

A fixed sign may be used to identify any piece of property and its owner. Any piece of property may carry or dispiay religious symbols, commemorative plaques of recognized historical societies and organizations, signs carrying news items or telling the time or temperature, signs erected in discharge of any governmental function, or temporary political campaign signs. No other noncommercial or ideological signs meeting the the structural definition are permitted, regardless of their effect on traffic safety or esthetics.

Metromedia, 453 U.S. at 514, 101 S.Ct. at 2896.

Interpreting *Metromedia* to hold that "an ordinance is invalid if it . . . regulates non-commercial billboards based on their content," the Ninth Circuit struck an ordinance because of its system of exemptions from a city wide ban on off-site advertising billboards. *National Advertising Co. v. Orange*, 861 F.2d 246, 248 (9th Cir.1988).[6]

We find that the exemptions in the Douglasville ordinance are distinguishable from the exemptions in the San Diego and Orange ordinances. First, "[l]aws regulating the time, place or manner of speech stand on a different footing from laws prohibiting speech altogether." *Linmark Assocs. Inc. v. Willingboro*, 431 U.S. 85, 93, 97 S.Ct. 1614, 1618, 52 L.Ed.2d 155 (1977). Unlike the San Diego and City of Orange requirements, the Douglasville exemptions are not exemptions from a general ban of all off-premise billboards, but from permitting requirements and permits fees. Messer has not challenged the *permit process* as an unconstitutional restriction on speech. Thus, the Douglasville sign ordinance stands on a different footing from the complete bans on speech in San Diego and the City of Orange.

Second, these exemptions are much more limited than those in the San Diego or City or Orange ordinances, and do not favor commercial over noncommercial messages, neither do they express a preference between different noncommercial messages. There are no specific exemptions for political, historical, religious, or special event signs. In fact, this ordinance favors noncommercial over com-

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[6] Signs that did not require permits included governmental and utility signs, memorial tablets, some flags, nonelectric signs within recreational facilities which were not visible from any public street, temporary political signs, temporary nonelectric real estate and construction signs, small nonelectric signs within a building, small real estate pennants used for open house activity, small traffic signs and changes on copy signs. *Orange*, 861 F.2d at 248 n. 2.

The Ninth Circuit discussed, but reserved judgment on whether an onsite/offsite distinction between noncommercial messages would be valid. *Orange*, 861 F.2d at 249 n. 3.

mercial mesages by expressly *deregulating* messages by noncommercial speakers.

Thus, we hold that the system of exemptions from the permitting process do not violate the First Amendment.

C. *The temporary permit bond requirements*

Section 26-18 of the Douglasville Code authorizes "temporary permits for instructional and political signs to be placed on the streets of the city, . . . whereby the public will be directed to a specific place or event or a specific political candidate or political issue." The applicant for such a permit must post a $500 bond to ensure that the signs are removed within 10 days following the event the signs advertise.

Messer argues that this requirement burdens applicants to post political signs with a financial requirement not applicable to others, and thus is a limitation on the fundamental right of political speech. We find no truth in this assertion. The bond requirement burdens all signs regarding events of a temporary nature.

Messer also argues that the regulation is not sufficiently narrowly tailored to pass constitutional muster as other alternatives exist to ensure that temporary signs are removed. However, it is not necessary to pass the least restrictive regulation possible. "[T]he regulation will not be invalid simply because a court concludes that the government's interest could be adequately served by some less-speech-restrictive alternative." *Ward v. Rock Against Racism*, 491 U.S. 781, 800, 109 S.Ct. 2746, 2758, 105 L.Ed.2d 661 (1989). Thus, even if there exists narrower means of achieving the government's purpose, as Messer suggests, because this regulation is not *substantially* broader than necessary, the regulation is upheld

D. *The portable display provisions*

Portable display signs are "mobile/temporary, electrical or nonelectrical, changeable copy sign[s] . . . mounted on a trailer type frame with or without wheels or skids or

portable wood or metal frame and not permanently attached to the ground." City of Douglasville, Ga.Code § 26-4. Section 26-8(D)(4) limits the maximum number of portable display signs that can be issued to a business to one temporary permit for every six months, the permit to last for a maximum of sixteen days.

In *Harnish v. Manatee County*, 783 F.2d 1535 (11th Cir.1986), this court held that aesthetics was a substantial government interest and a county's total ban on portable signs was constitutional.[7] In *Don's Porta Signs, Inc. v. Clearwater*, 829 F.2d 1051 (1th Cir.1987), *cert. denied*, 485 U.S. 981, 108 S.Ct. 1280, 99 L.E.2d 491 (1988), this court found that regulations limiting the size and use of portable signs were constitutional as they directly furthered the governmental interest in aesthetics by producing at least a *partial solution* to the government's efforts to reduce visual clutter.

The City of Douglasville has expressed an interest in aesthetics,[8] and has chosen a partial solution by limiting

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[7] The *Harnish* court reasoned that *Metromedia*, *Vincent* and *Clark supra*, stood for three principles:

> 1. Aesthetics is a substantial governmental goal which is entitled to and should be accorded weighty respect;
>
> 2. The governmental entity charged with the responsibility of protecting the environment must be given discretion in determining how much protection is necessary and the best method of achieving that portection; and
>
> 3. Although any regulation of speech is capable of being narrowed to some extent, the Constitution does not mandate speculation as to how restrictions could be redrafted as long as the restriction is narrowly tailored to achieve the aesthetic goal and alternative means of communication remain available.

Harnish, 783 F.2d at 1539 (footnote omitted).

[8] Section 26-1 of the Douglasville Code states:

> In order to protect the public safety, to assure compatibility of signs with surrounding land uses, to enhance the business and economy of the City of Douglasville, to protect the public investment in the streets and highways, to maintain the tranquil

the use of portable signs. Since it could have prohibited *all* portable signs in furtherance of this interest, by allowing a limited number, it is in fact more narrowly tailoring the restrictions to meet its purposes. Thus, the ordinance is constitutional.

We find *Dills v. City of Marietta*, 674 F.2d 1377 (11th Cir.1982), *cert. denied*, 461 U.S. 905, 103 S.Ct. 1873, 76 L.Ed.2d 806 (1983), inapposite to this case. In *Dills*, this court overturned a regulation on portable signs because the city had presented no evidence to support its argument that it had prohibited such signs in the interest of aesthetics. *Dills*, 674 F.2d at 1381.

E. *Messer's standing to challenge the variance powers of the Douglasville Board of Appeals and Adjustments*

Section 26-10(1) allows for the owner of a proposed sign or his duly authorized agent to appeal from a decision of the building official. Messer challenges the delegation of variance powers to the Board as unconstitutionally vague and broad in violation of due process. To grant a variance, there must be a showing that the application of the ordinance is contrary to the purpose of the code, and that it would result in manifest injustice.

We affirm the district court's holding that Messer does not have standing to challenge the Board of Appeals, as it was not he who had requested and received the hearing. The appeal in this case had been made by the billboard companies Holland and Jimbo, who have since been dismissed from this case with prejudice. Messer has made no

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environment of residential areas, to promote industy and commerce, to provide an aesthetically appealing environment, and to provide for the orderly and reasonable display of advertising for the benefit of all its citizens, the city council of Douglasville, Georgia, hereby determines that the public health, safety and welfare, and to eliminate visual clutter and blight, require the adoption of this chapter.

attempt at any showing that he requested and was denied a hearing, a variance, or that his individual due process rights were in any way violated. He has not attempted to exhaust his administrative remedies before appealing to this court. *See Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 50-51, 58 S.Ct. 459, 463, 82 L.Ed. 638 (1938) ("no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted").

III. CONCLUSION

For the foregoing reasons, we AFFIRM the holding of the district court.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

1:90-cv-1521-RCF

JAMES G. MESSER, *et al.*

vs.

CITY OF DOUGLASVILLE, GEORGIA

ORDER

[Filed June 26, 1991]

This action is before the court on cross-motions for summary judgment.

Background

Plaintiff [1] owns a tract of real property in the City of Douglasville which is located in the Douglasville Historic District. Plaintiff previously leased a portion of this property to Jimbo Displays, Ins. for the sole purpose of allowing the erection and maintenance of an outdoor advertising structure [billboard]. The City of Douglasville originally authorized a permit for the billboard on plaintiff's property, but it later stated that the sign was in violation of the Sign Ordinance [ordinance] enacted on June 1, 1989. Thereafter Adams Outdoor Advertising of Atlanta, Inc. contracted with plaintiff to lease plain-

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[1] All plaintiffs other than James G. Messer have been dismissed from this action.

tiff's property for placement of a billboard. This lease is contingent upon plaintiff prevailing in this action.

Plaintiff challenges the constitutionality of defendant's ordinance on five grounds: 1) the ordinance violates the first amendment by favoring commercial speech over non-commercial speech; 2) the ordinance violates the first amendment because its permit process is not content-neutral; 3) the temporary permit provisions of the ordinance violate the first amendment and the equal protection clause of the fourteenth amendment; 4) the portable display provisions of the sign ordinance violate the first amendment; and 5) the variance powers granted to the Douglasville Board of Adjustments and Appeals in the ordinance violate the due proces clauses of the fourteenth amendments to the U.S. and Georgia Constitutions.

Summary Judgment Standard

Under Fed. R. Civ. P. 56 the court should grant a motion for summary judgment where "there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." The Supreme Court has clarified the standard for granting summary judgment. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548 (1986); *Anderson v Liberty Lobby, Inc*, 477 U.S. 242, 106 S. Ct. 2505 (1986). The movant carries his burden by showing the court that there is "an absence of evidence to support the nonmoving party's case" *Celotex*, 477 U.S. at 325, 106 S. Ct. at 2554. The nonmovant, however, bears the burden of sufficiently establishing the existence of each element essential to his case on which he will bear the burden of proof at trial. *Id.* at 322, 106 S. Ct. at 2553. "The mere existence of a scintilla of evidence" supporting the nonmovant's case is insufficient to defeat a motion for summary judgment. *Anderson*, 477 U.S. at 252, 106 S. Ct. at 2512. The court, resolving all reasonable doubts in favor of the nonmovant, must determine "whether a fair-minded jury

could return a verdict for the plaintiff on the evidence presented." *Id.*

Discussion

Plaintiff contends that the ordinance favors commercial speech over noncomercial speech in several instances because of the manner in which it defines off-premise advertising signs and on-premise signs. Section 26-4 of the ordinance defines an off-premise advertising sign as "[a] sign which directs attention to a building, profession, product, service, activity, or entertainment not conducted, sold, or offered on the property upon which the sign is located." An on-premise sign is defined as "[a] sign which directs attention to a building, profession, product, service, activity, or entertainment conducted, sold, or offered on the property upon which the sign is located." Under the ordinance, only on-premise signs are permitted in the Douglasville Historic District. Plaintiff asserts that pursuant to these definitions, only an off-premise advertising sign may bear a noncommercial message, and "an on-premise sign will never bear a non-commercial message except in the rare instance in which the premises on which it is placed is the local office of a non-commercial enterprise." Plaintiff's Brief in Support, at 4.

Plaintiff relies upon the Supreme Court's decision in *Metromedia, Inc. v. San Diego*, 453 U.S. 490, 101 S. Ct. 2882 (1981), to support his contention that the ordinance's distinction between commercial and non-commercial speech violates the first amendment. The San Diego ordinance at issue in *Metromedia* prohibited billboards conveying noncommercial messages throughout the city. The Court held that "the city may not conclude that the communication of commercial information concerning goods and services connected with a particular site is of greater value than the communication of noncommercial mesages." 453 U.S. at 513, 101 S. Ct. at 2895.

The court finds the ordinance at issue distinguishable from the ordinance in *Metromedia*. Defendant correctly asserts that "[t]he Douglasville ordinance permits any message, whether commercial or non-commercial, as long as it relates to the *activity* carried out on the premises" in the city's historic district. Defendant's Brief in Support, at 7. The ordinance in *Metromedia* clearly restricted the content of on-premises billboards to commercial speech.

Despite plaintiff's attempts to differentiate it, the court finds that the ordinance in this action is very similar to the ordinance upheld by the Sixth Circuit in *Wheeler v. Comm'r of Highways*, 822 F.2d 586, 593 (6th Cir. 1987), *cert. denied*, 484 U.S. 1007, *reh'g denied*, 485 U.S. 944 (1988). The court in *Wheeler* distinguished *Metromedia* on the same basis, explaining

> [a]dditionally, unlike the ordinance in *Metromedia*, the . . . restrictions permit any non-commercial signs as long as they relate to an activity on the premises. The magistrate failed to recognize that messages such as "Abortion is Murder" or "No Nukes" are permissible as long as an activity is conducted on the property.

Id. The court therefore finds that the ordinance does not impermissibly distinguish between commercial and non-commercial speech in violation of the first amendment.

Defendant asserts that plaintiff does not have standing to challenge the permit process of the ordinance, the temporary permit provisions, or the portable display provisions of the ordinance. In fact, *defendant fails to address plaintiff's challenge to these provisions on the merits.* The court finds that, to the contrary, plaintiff does have standing to challenge these additional provisions of the Douglasville ordinance. As the Supreme Court has explained,

> in the First Amendment context, "litigants [] are permitted to challenge a statute not because their

> own rights of free expression are violated, but because of a judicial prediction or assumption that the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression."

Virginia v. American Booksellers Ass'n, Inc., 484 U.S. 383, ——, 108 S. Ct. 636, 642 (1988) (cit. omitted). After carefully considering plaintiff's briefs addressing these three arguments, the court is inclined to strike the ordinance at issue on at least one of the above grounds. However, in the interest of judicial economy, the court believes a supplemental brief by defendant addressing these issues will be helpful to the court's resolution of the cross-motions for summary judgment.

The court finds that defendant is correct in its assertion that plaintiff does not have standing to challenge the variance powers given to the Douglasville Board of Adjustments and Appeals on fourteenth amendment due process grounds. Defendant contends that "[t]he Plaintiff has no standing to complain of a procedural due process violation in a hearing before the board of zoning adjustments and appeals because he did not request a hearing." Defendants' Brief in Response, at 11. The Supreme Court has stated that in order to assert a constitutional challenge to a governmental action a plaintiff must demonstrate that he " 'has sustained or is immediately in danger of sustaining some direct injury' as a result of the challenged official conduct and the injury or threat of injury must be both 'real and immediate,' not 'conjectural' or 'hypothetical'." *Los Angeles v. Lyons*, 461 U.S. 95, 103, 103 S. Ct. 1660, 1665 (1983). It is undisputed that the only hearing that took place in relation to this action was requested by Mr. Holland, on behalf of Holland Outdoor Advertising and Jimbo Displays, Inc., two corporations who have been dismissed from this action with prejudice. Thus, plaintiff's due process challenge to this portion of the ordinance is clearly "conjectural."

Accordingly, defendant's motion for summary judgment is GRANTED IN PART. Defendant's motion for oral argument is DENIED. Defendant is DIRECTED to file a supplemental brief addressing the specific issues outlined above within twenty (20) days from the entry of this order. Plaintiff may file a reply to defendant's supplemental response within ten (10) days thereafter. The court DEFERS ruling on the remaining portions of the cross-motions for summary judgment. The Clerk is DIRECTED to resubmit this action upon expiration of the above time period.

SO ORDERED, this 26th day of June, 1991.

/s/ Richard C. Freeman
RICHARD C. FREEMAN
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

1:90-cv-1521-RCF

JAMES G. MESSER, *et al.*

vs.

CITY OF DOUGLASVILLE, GEORGIA

ORDER

[Filed September 25, 1991]

This action is before the court on cross-motions for summary judgment.

Background

Plaintiff [1] owns a tract of real property in the City of Douglasville which is located in the Douglasville Historic District. Plaintiff previously leased a portion of this property to Jimbo Displays, Inc. for the sole purpose of allowing the erection and maintenance of an outdoor advertising structure [billboard]. The City of Douglasville originally authorized a permit for the billboard on plaintiff's property, but it later stated that the billboard was in violation of the Sign Ordinance [ordinance] enacted on June 1, 1989. Thereafter Adams Outdoor Advertising of Atlanta, Inc. contracted with plaintiff to lease plain-

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[1] All plaintiffs other than James G. Messer have been dismissed from this action.

tiff's property for placement of a billboard. This lease is contingent upon plaintiff prevailing in this action.

Plaintiff challenges the constitutionality of the ordinance on five grounds: 1) the ordinance violates the first amendment by favoring commercial speech over noncommercial speech; 2) the ordinance violates the first amendment because its permit process is not content-neutral; 3) the temporary permit provisions of the ordinance violate the first amendment and the equal protection clause of the fourteenth amendment; 4) the portable display provisions of the sign ordinance violate the first amendment; and 5) the variance powers granted to the Douglasville Board of Adjustments and Appeals in the ordinance violate the due process clauses of the fourteenth amendments to the U.S. and Georgia Constitutions. In its order of June 26, 1991, the court granted summary judgment in favor of the defendant on plaintiff Messer's first and fifth grounds. The court also directed the parties to file supplemental briefs addressing the constitutionality of the ordinance's permit process, the temporary permit provisions, and the portable display provisions.

Summary Judgment Standard

Under Fed. R. Civ. P. 56 the court should grant a motion for summary judgment where "there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." The movant carries his burden by showing the court that there is "an absence of evidence to support the nonmoving party's case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S. Ct. 2548, 2554 (1986). The nonmovant, however, is then required "to go beyond the pleadings" and present competent evidence in the form of affidavits, depositions, admissions and the like, designating "specific facts showing that there is a genuine issue for trial" *Id.* at 334, 106 S. Ct. at 2553. Generally, "[t]he mere existence of a scintilla of evidence" supporting the nonmovant's case is

insufficient to defeat a motion for summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252, 106 S. Ct. 2505, 2512 (1986). The court, resolving all reasonable doubts in favor of the nonmovant, must determine "whether a fairminded jury could return a verdict for the plaintiff on the evidence presented" *Id.*

Discussion

a. Section 26-17 of the Ordinance

The parties agree that this section of the ordinance should be analyzed by the court in accordance with the analysis used in *Central Hudson Gas & Electric Corp. v. Public Service Comm'n*, 447 U.S. 557, 100 S. Ct. 2343 (1980). The *Central Hudson* test is summarized as follows:

> (1) only commercial speech which concerns a lawful activity and is not misleading is protected under the first amendment. A restriction on protected commercial speech is valid if it (2) seeks to implement a substantial governmental interest, (3) directly advances that interest, and (4) reaches no further than necessary to accomplish the given objective.

Don's Porta Signs, Inc. v. Clearwater, 829 F.2d 1051, 1052 (11th Cir.), *cert. denied*, 485 U.S. 981 (1987). The parties agree that the first prong of the test is satisfied.

The constitutionality of section 26-16 of the ordinance was upheld in the court's order of June 26, 1991. Section 26-17 provides that certain signs are exempt from the permit requirement set out in section 26-16. After carefully reviewing the parties' briefs on this issue, the court finds no constitutional infirmity in section 26-17 of the ordinance. The list of exemptions in section 26-17 is clearly not a *restriction* on commercial speech.

b. Section 26-18 of the Ordinance

This section of the ordinance requires persons interested in advertising or calling attention to a specific event, political candidate, or political issue to obtain a temporary permit prior to posting a sign of that nature. The temporary permit for such signs will not be issued until the applicant files a bond by a licensed surety company or a cash bond in the amount of $500. The bond is refunded upon removal of the signs after the event.

Defendant contends that this section of the ordinance seeks to advance the city's aesthetic interest. The city asserts that this section directly advances that interest because "the only way to insure removal of the signs is to require a bond up front." Defendant's Supplemental Brief, at 15.

Plaintiff contends that this section of the ordinance is a limitation on the fundamental right of political speech and challenges it on both first and fourteenth amendment grounds. Plaintiff further claims that "it is clear that less intrusive means exist to require the removal of political and special events signs after the occurrence of an election or a special event. One obvious method would be to require the placement on each sign of the name and street address of an individual or officer of the party posting the sign under penalty of immediate removal by the city for failure to do so." Plaintiff's Reply to Defendant's Supplemental Brief, at 7. Plaintiff contends "that the [c]ourt must not only assess the substantiality of the governmental interests asserted but also determine whether those interests could be served by means that would be less intrusive on activity protected by the [f]irst [a]mendment." *Schad v. Mt. Ephraim*, 452 U.S. 61, 70, 101 S. Ct. 2176, 2183 (1981).

The court again finds no constitutional infirmity in this section of the ordinance. Plaintiff's argument as to this section rests primarily upon the claim that there are

clearly less intrusive means of assuring removal of political and special events signs after the occurence of an event. After carefully considering the parties' contentions, the court finds that this section is narrowly tailored to support a substantial governmental interest. It is clear that in first amendment analysis, "[s]o long as the means chosen are not substantially broader than necessary to achieve the government's interest, however, the regulation will not be invalid simply because a court concludes that the government's interest could be adequately served by some less-speech-restrictive alternative." *Ward v. Rock Against Racism*, 491 U.S. 781, ——, 109 S. Ct. 2746, 2758 (1989). Furthermore, "[i]f there is a sufficient 'fit' between the legislature's means and ends to satisfy the concerns of the [f]irst [a]mendment, the same 'fit' is surely adequate under the applicable 'rational basis' equal protection analysis." *Posadas de Puerto Rico Assoc. v. Tourism Co.*, 478 U.S. 328, ——, 106 S. Ct. 2968, 2978 n. 9 (1986).

c. Section 26-8(D)(4) of the Ordinance

Plaintiff finally challenges this section of the ordinance which "provides that the maximum number of portable display temporary sign permits that may be issued to a business on an individual lot is limited to one temporary permit during every six-month period and also requires the temporary permit [to] be issued for a period of time not to exceed sixteen calendar days." Plaintiff's Reply to Defendant's Supplemental Brief, at 9. Plaintiff relies solely upon the Eleventh Circuit's holding in *Dills v. Marietta*, 674 F.2d 1377 (11th Cir. 1982), *cert. denied*, 461 U.S. 905 (1983).

The court finds that based upon two more recent Eleventh Circuit opinions applying the *Central Hudson* test to this type of ordinance, this section regulating portable displays is clearly constitutional. In both *Don's Porta Signs, Inc. v. Clearwater*, 829 F.2d at 1053, and

Harnish v. Manatee County, 783 F.2d 1535, 1539 (11th Cir. 1986), the defendants' asserted interest in regulating portable signs was also "aesthetic." In upholding the regulation at issue in *Don's Porta Signs*, the court explained that "the governmental entity charged with the responsibility of making determinations about aesthetics must be given discretion in determining both the best method of achieving that goal and the degree of protection necessary." 829 F.2d at 1053. Section 26-8(D)(4) of the ordinance similarly meets the requirements of the *Central Hudson* test.

The court finds *Dills* distinguishable, because the ordinance at issue in that case included only a broad statement of purpose, and there was "an absence of any evidence that Marietta officials considered portable signs aesthetically displeasing." 674 F.2d at 1381. The court therefore determined that the real interests of the city of Marietta was in traffic safety, and the court found that the "time restrictions imposed on the use of portable signs do not directly advance the claimed interest in traffic safety." *Id.*

CONCLUSION

Accordingly, defendants' motion for summary judgment is GRANTED. The Clerk is DIRECTED to enter final judgment in this action in favor of defendant.

SO ORDERED, this 25th day of September, 1991.

/s/ Richard C. Freeman
RICHARD C. FREEMAN
United States District Judge

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 91-8941

JAMES G. MESSER,
Plaintiff-Appellant,

versus

CITY OF DOUGLASVILLE, GEORGIA,
a political subdivision of the State of Georgia,
Defendant-Appellee.

On Appeal from the United States District Court
for the Northern District of Georgia

ON PETITION(S) FOR REHEARING AND
SUGGESTION(S) OF REHEARING EN BANC

[Filed December 28, 1992]

Before: DUBINA, Circuit Judge, HILL and CLARK, Senior Circuit Judges.

PER CURIAM:

(✓) The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ Joel F. Dubina
United States Circuit Judge

DOUGLASVILLE, GEORGIA
SIGN CONTROL ORDINANCE

ARTICLE I. IN GENERAL

Sec. 26-1. Preamble.

In order to protect the public safety, to assure compatibility of signs with surrounding land uses, to enhance the business and economy of the City Douglasville, to protect the public investment in the streets and highways, to maintain the tranquil environment of residential areas, to promote industry and commerce, to provide an aesthetically appealing environment, and to provide for the orderly and reasonable display of advertising for the benefit of all its citizens, the city council of Douglasville, Georgia, hereby determines that the public health, safety and welfare, and to eliminate visual clutter and blight, require the adoption of this chapter.

* * * *

Sec. 26-4. Definitions.

For the purpose of this section, certain terms and words are hereby defined. Words in the present tense shall include the future, the singular number shall include the plural and the plural shall include the singular, and the word shall is mandatory.

Animated sign: A sign with action or motion, with moving characters, or changing colors which require electricity, but not including wind activated elements, such as flags or banners. This definition does not include time and temperature signs.

Announcement sign: A single face non-illuminated professional or incidental sign not exceeding two (2) square feet in area, and attached wholly to a building, window or door. Such sign only includes emergency information, business hours, credit card honored and other accessory information.

Area of sign: The area within a continuous perimeter enclosing the limits of writing, representation, emblem or any figure or character, together with any frame or other material of color forming an internal part of the display or used to differentiate such sign from the background against which it is placed; excluding the necessary supports or uprights on which such sign is placed; provided, however, any open space contained within the outer limits of the display face of a sign or between any component, panel or strip, or figure of any kind composing the display face shall be included in the computation of the area of the sign, whether or not such open space be enclosed by a frame or border. For projecting or double-faced signs, only one display face shall be measured in computing sign area where the sign faces are parallel or where the interior angle formed by the faces is sixty (60) degrees or less. If the two (2) faces of a double-faced sign are of unequal area, the area of the sign shall be taken as the area of the larger face.

Building identification sign: A facia sign used to identify or indicate the name of a building.

Bulletin board: A sign which primarily displays the name of a noncommercial place of public assembly and announces the upcoming event(s) of that organization.

Business sign: Same as on-premise sign.

Canopy sign: A sign either temporarily or permanently affixed to, superimposed upon, or painted on any roof-like structure, which is extended over a sidewalk or vehicle access area. A flush canopy sign is one that is mounted in such a manner that a continuous plane with the canopy is formed. A hanging canopy sign is one suspended from or beneath the canopy.

Facia sign: A single face sign which is in any manner attached, or fixed flat to an exterior wall of a building or structure; included in this defintion shall be individual letters and "box type" (i.e. letters and symbols on an attached backing).

Flashing sign: A sign, the illumination of which is not kept constant in intensity at all times when in use, and which exhibits sudden or marked changes in lighting effect. Illuminated signs which indicate the time, temperature, or date shall not be considered a flashing sign.

Freestanding sign: A sign which is supported by one or more columns, uprights, or braces in or upon the ground and is not attached to a building and is not mobile or temporary.

Heights: The distance from the ground to the top of the sign as measured between the furthermost points.

Illuminated sign: A sign designed to give forth artificial light directly or through transparent or translucent material from a source of light within such sign, including but not limited to, neon and exposed lamp signs.

Indirectly illuminated sign: A sign illuminated by an exterior light directed primarily toward such sign and so shielded that no direct rays from the light are visible elsewhere than on the lot where said illumination occurs. If not effectively shielded, such sign shall be deemed to be an illuminated sign.

Marquee: A roofed structure attached to and supported by a building and projecting over public or private sidewalks or rights-of-way.

Marquee sign: A sign painted on, attached to, or hung from a marquee.

Off-premise advertising sign: A sign which directs attention to a building, profession, product, service, activity, or entertainment not conducted, sold, or offered on the property upon which the sign is located.

On-premise sign: A sign which directs attention to a building, profesion, product, service, activity, or entertainment conducted, sold, or offered on the property upon which the sign is located.

Planned commercial center: Three (3) or more commercial establishments which are planned, developed, and managed as a unit and which provide free parking facilities on one lot or contiguous lots.

Portable display sign: A mobile/temporary, electrical or non-electrical, changeable copy sign that is mounted on a trailer type frame with or without wheels or skids or portable wood or metal frame and not permanently attached to the ground.

Projecting sign: A sign which is attached to the building wall and which extends more than eighteen (18) inches from the face of such wall.

Public service sign: Any sign erected and maintained by public officials, or public agencies, or approved and authorized for use by state or local governmental authorities.

Roof sign: A sign that is mounted on the roof of a building or which is wholly dependent upon a building for support and projects above the point of the building if the building has a flat roof, the eave line of a building with a gambrel, gable or hip roof, or the deck line of a building with a mansard roof.

Rotating sign: A sign which is designed to revolve by means of electrical power.

Sign: Any name, identification, description, display, illustration, or device which is affixed to or represented directly or indirectly upon the exterior of a building, structure, or land in view of the general public which directs attention to a product, place, activity, person, business or institution.

Wall sign: A sign which is in any manner affixed to any exterior wall of a building or structure and which projects not more than eighteen (18) inches from the building or structure wall.

Sec. 26-7. Prohibited signs.

The following types of signs shall be prohibited unless authorized by a temporary permit:

* * * *

(9) No off-premise sign shall be located within three hundred (300) feet of any officially designated historical site or monument, except signs pertaining to that particular site.

* * * *

Sec. 26-8. Special regulation by type of sign.

* * * *

(b) *Freestanding on-premise signs:*

* * * *

(6) Height requirements. The height of all on-premise freestanding signs at their highest point above the level of the ground shall not exceed fifty (50) feet; provided, however, that a sign located on property adjacent to or within five hundred (500) feet of a Federal Interstate Highway which advertises a product or service of specific interest to the motoring public, such as automobile service stations, restaurants and motels, may be seventy (70) feet at its highest point, however if the ground is lower than the level of the adjoining street pavement, then a sign may be raised so as to be no more than twenty-five (25) feet above the level of the pavement. The level of the ground shall not be altered in such a way as to provide additional sign height. The height of all wall, canopy, and roof signs at their highest point above ground level shall be as provided by the standards of the applicable zoning district.

* * * *

(c) *Off-premise signs in general:*

* * * *

(3) *Height above interstate grade.* All signs adjacent to the interstate right-of-way shall be a minimum of ten (10) feet above the adjacent interstate pavement measuring from the lower portion of the sign face. Signs shall not exceed thirty (30) feet in height. Two (2) signs in the same location (back to back) or in a "V" formation shall be the same height above the interstate surface.

* * * *

(5) *Number of signs per location.* Only one sign on-premise or off-premise shall be allowed per lot frontage where a business, profession, product, service, activity, or entertainment is conducted, sold, or offered. Where no business, profession, product, service, activity, or entertainment is conducted, sold, or offered signs shall be no less than one thousand (1,000) feet apart measuring from the two (2) closest points and only one sign face shall be allowed to face the same direction per location. This allows back to back or "v" formation signs but prohibits two (2) signs (side by side or over and under) facing the same direction.

(6) *Spacing on the interstate.* Sign locations on property adjacent to the interstate highway right-of-way shall be no less than one thousand (1,000) feet apart, measuring from the two (2) closest points.

* * * *

(9) *Marsh area prohibitions.* No sign shall be placed in or obstruct the view of marshland.

(10) Signs shall not be placed within two hundred (200) feet of the property line of a bona fide residence, church, school, park or public building, as measured by the two (2) closest points.

* * * *

ARTICLE II. PERMITS

Sec. 26-16. Permit required.

(a) No sign shall be erected, reconstructed, expanded or replaced without securing a permit from the building official. All nonconforming signs shall be registered with the building official within ninety (90) days of the effective date of this chapter. No permit shall be required for a change of copy on a sign, the customary use of which involves frequent and periodic changes of copy.

Sec. 26-17. Permit fee not required.

No permit fee shall be charged for the following types of signs, however, prints or drawings showing location of such signs shall be submitted to the building official. No additional wall signs, real estate sales signs, bulletin boards, or project signs except as authorized under this section shall be permitted.

(a) A permit must be obtained, but no permit fee shall be charged for one wall sign per building side announcing the business and attached flat to the side of the building. The wall sign(s) shall cover no more than a maximum of twenty-five percent (25%) of the wall surface.

(b) No permit or permit fee shall be required for one real estate "for sale" sign per property frontage, that does not exceed twelve (12) square feet in sign area in residential areas or one hundred (100) square feet in sign area in nonresidential districts. No separate "for lease" sign may be displayed except within the sign face of an existing permitted sign or within the window of the building "for lease."

(c) No permit or permit fee shall be required for one bulletin board that does not exceed thirty-two (32) square feet in sign area for public, charitable,

educational or religious institutions when the sign is located on the premises of said institution.

(d) No permit or permit fee shall be required for one sign per project location denoting the architect, engineer, contractor or financial institution when placed upon work under construction, alteration or removal that does not exceed fifteen (15) square feet in sign area in residential areas or one hundred (100) square feet in sign area in nonresidential districts. All such signs shall be removed from the site within seven (7) days after substantial completion of the project.

(e) No permit shall be required for signs directing traffic movement onto a premise or within a premise if the directional sign is under thirty (30) inches high and contains no advertisement.

ARTICLE III. HISTORIC DISTRICT

Sec. 26-26. Douglasville Historic District identified.

The Douglasville Historic District is identified and designated as that area within the City of Douglasville shown and identified on that certain map of the Douglasville Historic District, as now or hereafter amended by resolution of the city council of Douglasville. A copy of said map is on file for inspection in the office of the building official and is hereby incorporated herein by reference. (Ord. No. 89-18, 1, 4-17-89)

Sec. 26-27. Restrictions.

All signs in the Douglasville Historic District, with the exception of nonconforming signs as provided for in section 26-9(a), must be permitted by the building official, but only after such application for such sign has been reviewed by the downtown historic district review committee and a recommendation on such application has been to the building official. The following more restric-

tive provisions shall apply to the Douglasville Historic District in addition to other provisions of this chapter:

(1) *Temporary informational signs.* Temporary informational signs shall be permitted as follows:

(a) Exterior temporary informational signs shall provide information of sale, rent, lease or special promotions and shall be located on private property and shall be less than twenty-five (25) percent of the area of the principal use sign.

(b) No temporary informational sign shall be erected for a period exceeding sixty (60) days. After sixty (60) days, a certificate of approval is required from the building official.

(c) All temporary informational signs shall have the date that they first displayed written in the lower right hand corner; if said sign fails to have the first display date written in the lower right hand corner then it will be presumed that the sign has been displayed for the maximum sixty day period.

(2) *Announcement signs.* Announcement signs shall be permitted as follows:

(a) One announcement sign shall be permitted for the building entrance or exit provided it is restricted to providing only emergency information, business hours, credit cards honored, or other such incidental business related information.

(b) Announcement signs shall not exceed one square foot of display area.

(3) *Principal use and supplemental identification signs.* Principal use and supplemental identification signs shall be allowed as follows:

(a) Number of principal use and supplemental use signs per establishment allowed: One prin-

cipal use sign shall be permitted for each building establishment. The sign can be either a facia sign or a projection sign. Where a business fronts on more than one street or pedestrian walkway providing public access, one principal use sign for each such frontage shall be permitted; provided that only the maximum sign area computed for a given street frontage shall face that street. If the linear frontage per public street exceeds two hundred (200) feet, one additional sign shall be permitted for each additional one hundred (100) feet of street frontage or a fraction thereof.

(b) In addition to the principal use sign, supplemental identification signs, not exceeding an aggregate sign area of three (3) square feet, shall be permitted adjacent to each entrance of the building. Such identification signs shall be limited to providing the trade name or logo of the establishment, and shall be mounted or attached flat against the building.

(c) Principal use signs shall be restricted by the type as follows:

1. Projecting signs. Projecting signs shall be limited as follows:

   a. Projecting signs shall not exceed one sq. foot of display area per sign face per linear foot of frontage occupied by each principal use; provided that a maximum sign area of forty-five (45) square feet shall be permitted per sign face for each projecting principal use sign allowed.

   b. The outer edge of a projecting sign shall not extend more than five (5) feet from the building to which it is attached.

   c. The height of a projecting sign shall not extend above the parapet wall of the building,

the lowest point shall not be less than ten (10) feet above the established grade.

2. Facia signs. Facia signs shall be limited as follows:

   a. Facia signs shall not exceed one seventh (1/7) of the square footage of each principal building front.

   b. The facia sign shall not extend above the parapet wall of the buildings or extend within three (3) feet of the property line or common building line nor shall it project out from the building facade more than fifteen (15) inches.

3. Awning or canopy signs. In addition to other signs, one awning or canopy sign attached to the underside of the canopy or awning shall be permitted for each principal entrance providing access. The display area of such sign shall not exceed six (6) square feet per sign. Signs shall not be less than one foot from the outer edge of the canopy.

4. Marquee signs. A motion picture theater marquee sign may be extended to the leading edge of a marquee existing on the adoption date of this article, however, the total sign area of such sign shall not exceed a total of ninety (90) square feet. No additional permit shall be required where a sign is affixed to or part of such marquee in accordance with this article until such marquee is replaced, remodeled, or altered. New or remodeled signs shall not extend farther than eight (8) feet from the facade of a building nor exceed a sign area of greater than forty-five (45) square feet. The height of a new or re-modeled marquee sign shall not extend above the parapet wall of the building, and the lowest point of the

marquee sign shall not be less than ten (10) feet above the established grade.

5. Building identification sign. Building identification signs shall be permitted along the signable area of each building facade. The maximum aggregate size of such signs shall not exceed an area of one-half (1/2) square foot per linear foot of building frontage; provided, however, that the aggregate size of such signs along a single facade shall not exceed an area of ninety (90) square feet. (Ord. No. 89-18, § 1, 4-17-89)

Sec. 26-28. Prohibited signs.

The following signs are prohibited within the Douglasville Historic District unless specifically permitted as a temporary sign:

(1) Banners, pennants and streamers along or across road rights-of-way, except flags or banners of the United States or other political subdivision thereof.

(2) Folding signs, portable display signs, and similar movable signs.

(3) Signs erected on or located on any street or public post, trees, barricade, temporary walk, public system except public directory and information signs.

(4) Signs painted directly on the exterior walls of a building or structure not including graphic designs.

(5) Signs with revolving or rotating beams of light.

(6) Room mounted signs.

(7) Off-premise or separate use signs.

(8) Signs placed upon a structure in any manner so as to disfigure or conceal any window opening, door or significant architectural feature or detail of any building. (Ord. No. 89-18, § 1, 4-17-89)